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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**8
9 Kimberly-Grace Schadawn Williams,
10 Plaintiff,

No. CV-15-08267-PCT-JJT

ORDER

11 v.

12 Commissioner of Social Security
13 Administration,
14 Defendant.

15 At issue is the denial of Plaintiff Kimberly-Grace Schadawn Williams's
16 Application for Disability Insurance Benefits by the Social Security Administration
17 ("SSA") under the Social Security Act ("the Act"). Plaintiff filed a Complaint (Doc. 1)
18 with this Court seeking judicial review of that denial, and the Court now addresses
19 Plaintiff's Opening Brief (Doc. 18, "Pl.'s Br."), Defendant Social Security
20 Administration Commissioner's Opposition (Doc. 19, "Def.'s Br."), and Plaintiff's Reply
21 (Doc. 20, "Reply"). The Court has reviewed the briefs and Administrative Record (Doc.
22 13, R.) and now affirms the Administrative Law Judge's ("ALJ") decision (R. at 8-26) as
23 upheld by the Appeals Council (R. at 1-6).

24 **I. BACKGROUND**

25 Plaintiff filed applications for Disability Insurance on March 6, 2012, for a period
26 beginning June 15, 2009. (R. at 147-48.) Plaintiff's claims were denied initially on
27 November 9, 2012 (R. at 82-85), and on reconsideration on May 7, 2013 (R. at 87-89).
28 Plaintiff then testified at a hearing held before an ALJ on March 12, 2014. (R. at 27-49.)

1 On May 21, 2014, the ALJ denied Plaintiff's claims (R. at 8-26), and the Appeals
2 Council upheld the ALJ's decision (R. at 1-6). The present appeal followed.

3 Having reviewed the entirety of the medical records in detail, it is unnecessary to
4 provide an additional summary here. The relevant portions of medical evidence have
5 been raised by the parties or will be discussed by the Court. In sum, the ALJ found that
6 Plaintiff has severe impairments of atrial septal defect, a history of mild pulmonary
7 hypertension, obesity, and depressive disorder not otherwise specified (R. at 13) after
8 considering medical records and opinions primarily from examining psychologist
9 Dr. Stephen Gill, nonexamining state agency reviewers Drs. Adrienne Gallucci and Elliot
10 Salk, and consultative examiner Dr. Paul Bendheim.

11 **II. ANALYSIS**

12 In determining whether to reverse an ALJ's decision, the district court reviews
13 only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236
14 F.3d 503, 517 n.13 (9th Cir. 2001). The court may set aside the Commissioner's
15 disability determination only if the determination is not supported by substantial evidence
16 or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial
17 evidence is more than a scintilla, but less than a preponderance; it is relevant evidence
18 that a reasonable person might accept as adequate to support a conclusion considering the
19 record as a whole. *Id.* To determine whether substantial evidence supports a decision, the
20 court must consider the record as a whole and may not affirm simply by isolating a
21 "specific quantum of supporting evidence." *Id.* As a general rule, "[w]here the evidence
22 is susceptible to more than one rational interpretation, one of which supports the ALJ's
23 decision, the ALJ's conclusion must be upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954
24 (9th Cir. 2002) (citations omitted).

25 To determine whether a claimant is disabled for purposes of the Act, the ALJ
26 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
27 proof on the first four steps, but the burden shifts to the Commissioner at step five.
28 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ

determines whether the claimant is presently engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant has a “severe” medically determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s impairment or combination of impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step four. *Id.* At step four, the ALJ assesses the claimant’s residual functional capacity (“RFC”) and determines whether the claimant is still capable of performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he determines whether the claimant can perform any other work in the national economy based on the claimant’s RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

Plaintiff alleges two primary ALJ errors: (1) improper rejection of Plaintiff’s symptom testimony without citing to clear and convincing reasons supported by substantial evidence, and (2) improper rejection of the assessments from examining and non-examining state agency doctors without specific and legitimate reasons that are supported by substantial evidence. (Pl.’s Br. at 1.)

A. The ALJ Properly Weighed Plaintiff’s Testimony

Plaintiff argues that the ALJ erred in her consideration of Plaintiff’s symptom testimony, finding it less than fully credible. (Pl.’s Br. at 8-15.) Specifically, Plaintiff contends that the ALJ offered multiple insufficient reasons that, combined, are not a substitute for reliance on the substantial evidence required. (Pl.’s Br. at 10.) In response, Defendant does not rely on all the reasons the ALJ provided but argues that substantial

1 evidence exists for the credibility determination.¹ (Def.’s Br. at 4-8.) Defendant contends
2 that Plaintiff’s testimony was belied by much of the medical evidence, as well as
3 Plaintiff’s work history, treatment choices, and own inconsistent statements. (Def.’s Br.
4 at 4-8.)

5 While credibility is the province of the ALJ, an adverse credibility determination
6 requires the ALJ to provide “specific, clear and convincing reasons for rejecting the
7 claimant’s testimony regarding the severity of the claimant’s symptoms.” *Treichler v.*
8 *Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (citing *Smolen v. Chater*, 80
9 F.3d 1273, 1281 (9th Cir. 1996)). When evaluating a claimant’s pain testimony where the
10 claimant has produced objective medical evidence of an underlying impairment, “an ALJ
11 may not reject a claimant’s subjective complaints based solely on a lack of medical
12 evidence to fully corroborate the alleged severity of pain.” *Burch v. Barnhart*, 400 F.3d
13 676, 680 (9th Cir. 2005); *see also Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir.
14 2015) (ALJ’s finding that a claimant is not credible, “must be sufficiently specific to
15 allow a reviewing court to conclude the adjudicator rejected the claimant’s testimony on
16 permissible grounds and did not arbitrarily discredit a claimant’s testimony regarding
17 pain”) (internal citations and quotation marks omitted). “General findings are
18 insufficient; rather, the ALJ must identify what testimony is not credible and what
19 evidence undermines the claimant’s complaints.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163
20 (9th Cir. 2014) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996)).

21 The ALJ found that Plaintiff’s medically determinable impairments could
22 reasonably be expected to cause the alleged symptoms but found the alleged intensity,
23 persistence, and limiting effects of those symptoms not entirely credible. (R. at 16.) For
24 all of these findings, the ALJ provided specific, clear, and convincing reasons for

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26 ¹ Defendant explicitly declines to rely on portions of the ALJ’s stated reasoning,
27 including Plaintiff’s failure to submit a statement from a medical provider consistent with
28 total disability (R. at 16), Plaintiff’s continued smoking and obesity (R. at 17), and
Plaintiff’s failure to attend two consultative examinations—apparently on advice of
counsel (R. at 17; Pl.’s Br. at 12). The Court will therefore not address these factors and
determine the sufficiency of the ALJ’s decision absent those citations.

1 rejecting Plaintiff's testimony, the most demanding of Social Security standards. *See*
2 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014).

3 First, the ALJ found that Plaintiff's reported symptoms were exaggerated and
4 incongruous with her medical records. (R. at 18.) For example, the ALJ cited to multiple
5 reports showing normal heart readings in contravention of Plaintiff's claims regarding a
6 severe heart condition. (R. at 18 (citing R. at 494, 547, 509).) Similarly, the ALJ cited to
7 several assessments contradicting Plaintiff's claims of serious injury to her wrist and
8 ankle. (R. at 17-18 (citing R. at 432, 505, 510).) Finally, the ALJ noted that Plaintiff's
9 psychological claims were belied by numerous treatment records that show a lack of
10 continued treatment and consistent and affirmative positive indicators regarding
11 Plaintiff's mental state, despite an apparent lack of management and medication. (R. at 18
12 (citing R. at 34, 290-91, 294, 300-301, 311, 317, 321-22, 327, 334, 383, 386, 397, 407,
13 410, 491, 498, 514, 518, 541, 557, 568, 576).)

14 Second, the ALJ discounted Plaintiff's testimony as it was internally contradicted
15 by Plaintiff's own statements. (Def.'s Br. at 4-7.) The ALJ noted that while Plaintiff
16 stated that she almost never drove or did not drive at all, and testified at the hearing that
17 she could not drive, she drove to an appointment with evaluating physician Dr. Gill.
18 (*Compare* R. at 33-34, 182, 435 *with* R. at 452.) While Plaintiff objects that this
19 inconsistency reflects her varied symptoms over time, it does not extinguish the internal
20 inconsistency. Plaintiff also makes a semantical argument that is wholly belied by
21 Plaintiff's actual quote. (*See* Pl.'s Br. at 12-13; R. at 452.) The ALJ also noted Plaintiff's
22 own reports contradicted her complaints of a severe heart condition. (*See* R. at 494.)
23 These inconsistencies in Plaintiff's statements provide proper reasoning to discount
24 Plaintiff's testimony, and the ALJ provided ample evidence for her findings. *See Light v.*
25 *Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997), *as amended on reh'g* (Sept. 17,
26 1997).

27 Third, the ALJ pointed out that Plaintiff worked only sporadically prior to the
28 disability onset date. (R. at 18.) Plaintiff explicitly declines to address this factor and is

1 correct that it does not disqualify Plaintiff from seeking disability benefits. However, it is
2 relevant to the ALJ's assessment of Plaintiff's symptom testimony. *See Thomas*, 278 F.3d
3 at 959; *Marsh v. Colvin*, 792 F.3d 1170, 1174 (9th Cir. 2015).

4 Finally, the ALJ noted that certain alleged conditions had gone unexplainably
5 untreated—a fact relevant to credibility findings—and that the ALJ, as well as other
6 physicians, felt that Plaintiff was exaggerating her symptoms. (R. at 18.) While the ALJ's
7 opinion on Plaintiff's exaggeration alone cannot provide the sole evidence for
8 discounting Plaintiff's reports, the ALJ's opinion was seconded by Drs. Gill and
9 Bendheim and corroborated by the records. (*See* R. at 18, 432, 452, 494, 505, 508-10,
10 547.) Plaintiff's report of symptoms that are not reflected in the record, and both the ALJ
11 and consultative evaluators' belief that Plaintiff exaggerated her conditions are proper
12 grounds for discounting symptom testimony. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148
13 (9th Cir. 2001).

14 For all these reasons, the Court finds the ALJ properly weighed Plaintiff's
15 testimony as to her subjective impairments and the limitations therefrom, and identified
16 what testimony was not credited and what evidence undermined those complaints. *See* 20
17 C.F.R. § 404.1529(c)(3); *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175 (9th Cir.
18 2008); *Warre ex rel. E.T. IV v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th
19 Cir. 2006).

20 **B. The ALJ Properly Interpreted the Examining and Non-Examining**
21 **Physicians' Mental Health Assessments**

22 Plaintiff also argues that the ALJ erred in her interpretation of the opinions of
23 examining psychologist Dr. Gill and nonexamining psychologists Drs. Gallucci and Salk.
24 (Pl.'s Br. at 16-21.) In response, Defendant contends that the ALJ properly interpreted
25 Dr. Gill's assessment and discounted it due to contradiction with the medical record and
26 Dr. Gill's reliance on Plaintiff's subjective complaints. (Def.'s Br. at 9-11.) Defendant
27 also argues that the ALJ properly assessed evaluations of Drs. Gallucci and Salk as a
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1 whole, including their narrative descriptions of Plaintiff's RFC limitations, which were
2 ultimately consistent with the RFC. (Def.'s Br. at 13-16.)

3 An ALJ may only reject an "uncontradicted medical opinion based on 'clear and
4 convincing reasons.'" *Carmickle v. Comm'r of Soc. Sec.*, 533 F.3d 1155, 1164 (9th Cir.
5 2008) (citing *Lester*, 81 F.3d at 830-31). "Where such an opinion is contradicted,
6 however, it may be rejected for specific and legitimate reasons that are supported by
7 substantial evidence in the record." *Id.*

8 **1. Dr. Gill**

9 Plaintiff argues that, in giving minimal weight to Dr. Gill's consultative
10 psychological examination reports, the ALJ erred in failing to provide specific and
11 legitimate reasons. (Pl.'s Br. at 16-19.) Defendant responds that the ALJ properly
12 discounted Dr. Gill's evaluation because it was inconsistent with the remainder of the
13 medical record and was based on subjective complaints for which there is no objective
14 evidence. (Def.'s Br. at 9-11.) The Court agrees.

15 The ALJ discounted Dr. Gill's opinion that Plaintiff was "emotionally liable"
16 because that assessment was not documented by Plaintiff's treating provider. (R. at 18.)
17 Plaintiff argues that this is an erroneous assessment, as Dr. Gill was only treating Plaintiff
18 for physical ailments, rather than mental. (Pl.'s Br. at 16-17 (citing R. at 456).) Defendant
19 responds that Plaintiff's treating providers affirmatively observed and recorded her
20 mental state, which was largely normal. (Def.'s Br. at 10 (citing R. at 290-91, 294, 300-
21 301, 311, 317, 321-22, 327, 334, 383, 386, 407, 410, 491, 498, 514, 518, 541, 557, 568,
22 576).) The positive observations of Plaintiff's treating physician can be considered in
23 weighing the medical evidence, even if those observations deal with an area outside of
24 the physician's specialty. *See, e.g., Lester*, 81 F.3d at 833 (noting that treating physician's
25 opinion regarding mental state is not discounted on the grounds he is not a psychiatrist).
26 Accordingly, the ALJ's consideration of such assessments was proper.

27 Plaintiff also argues that the ALJ erred in discounting Dr. Gill's "credulous"
28 acceptance of Plaintiff's complaints that were not documented in the medical record.

(Pl.'s Br. at 17 (citing R. at 18).) These complaints included Plaintiff's claims of an "enlarged heart," "serious injury at work," and other "complex medical problems." (R. at 18.) Plaintiff contends, again, that Dr. Gill was evaluating her mental impairments and any evaluation of such physical impairments is irrelevant. (Pl.'s Br. at 17.) However, as already discussed, these observations for which Dr. Gill made affirmative notation were properly discounted by the ALJ as they were inconsistent with the medical records. Further, Dr. Gill's records made specific notation of Plaintiff's physical conditions. (R. at 456 (noting that depressive disorder was "secondary to [Plaintiff's] multiple medical conditions").) As such, the ALJ gave specific and legitimate reasons for finding Plaintiff's alleged symptoms less than fully credible, supported by substantial evidence.

2. Drs. Salk and Gallucci

Plaintiff argues that discounting Dr. Salk's opinion was errantly speculative and that the ALJ improperly failed to discuss Dr. Gallucci's opinion whatsoever. (Pl.'s Br. at 19-21.) Defendant responds that Dr. Salk's opinion was properly discounted for its reliance on Dr. Gill's discounted opinion, and that any error—both in discounting Dr. Salk's and in failing to discuss Dr. Gallucci's—was harmless. (Def.'s Br. at 11-12.)

The ALJ gave "some weight" to the assessment of Dr. Salk and failed to discuss that of Dr. Gallucci. (R. at 18.) Plaintiff first argues that the ALJ could not properly discount Dr. Salk's findings, which were based on Dr. Gill's assessment, which itself was based on Plaintiff's subjective complaints and discounted due to the reasons above. Further, Plaintiff argues that because Dr. Gill found Plaintiff a reliable source of information, the ALJ may not discount an opinion that relies on Dr. Gill's. (Pl.'s Br. at 20 (citing R. at 435-36, 455-56).) The Court, however, has upheld the weight given to both Plaintiff's report of her impairments and Dr. Gill's opinion and thus will not reject the weight granted to Dr. Salk's opinion based on that very reasoning.

Plaintiff also argues, correctly, that the ALJ erred in her omission of Dr. Gallucci's opinion. (Pl.'s Br. at 16.) However, there is no ultimate error in her failure to do so. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (ALJ decisions will not be reversed

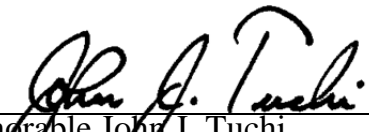
1 for errors that are harmless). Dr. Gallucci's opinion, as well as Dr. Salk's, are consistent
2 with the RFC, limiting Plaintiff to simple, routine, repetitive tasks and occasional
3 interaction with co-workers, supervisors, and members of the public. (R. at 15-16.)
4 Dr. Gallucci assessed moderate limitations in a number of functional categories in
5 narrative form. (R. at 52-59.) Dr. Salk's opinion, which was given some weight,
6 reiterated those assessments. (R. at 72.) ALJs are instructed to consider the narrative
7 portion of opinions, *Coffman v. Colvin*, No. C12-5812JLR, 2013 WL 3554422, at *2
8 (W.D. Wash. July 10, 2013), and the RFC capacity assessments of Drs. Gallucci and Salk
9 are consistent with the RFC. As such, any error in considering or failing to consider those
10 opinions is harmless. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
11 ("[T]he court will not reverse an ALJ's decision for harmless error, which exists when it
12 is clear from the record that the ALJ's error was inconsequential to the ultimate
13 nondisability determination.") (internal quotations marks omitted).

14 Plaintiff raises no material error on the part of the ALJ, and the SSA's decision
15 denying Plaintiff's Application for Disability Insurance Benefits under the Act was
16 supported by substantial evidence in the record, for which the ALJ provided ample
17 citation and explanation.

18 **IT IS THEREFORE ORDERED** affirming the May 21, 2014 decision of the
19 Administrative Law Judge, (R. at 8-26), as upheld by the Appeals Council (R. at 1-6).

20 **IT IS FURTHER ORDERED** directing the Clerk to enter final judgment
21 consistent with this Order and close this case.

22 Dated this 31st day of March, 2017.

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24 
25 Honorable John J. Tuchi
26 United States District Judge
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